

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

*In re: Nexium (Esomeprazole Magnesium)
Antitrust Litigation*

This Document Relates to All Actions

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

DECLARATION OF LAURENCE A. SCHOEN

I, Laurence A. Schoen, declare as follows:

1. I am a Member with the law of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel for Defendants Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd. (collectively “Teva”) in this action, and therefore have personal knowledge of the matters set forth herein. I submit this Declaration in support of Teva’s motions for summary judgment and motion to exclude proposed expert testimony.

2. Exhibit 1 is the Settlement Agreement between AstraZeneca and Teva dated January 6, 2010, resolving the Nexium (esomeprazole magnesium) patent litigation, bates numbered Teva-ESO-000032-73.

3. Exhibit 2 is the Settlement Agreement between AstraZeneca and Teva dated January 6, 2010, resolving the Prilosec (omeprazole) patent litigation, bates numbered Teva-ESO-000001-31.

4. Exhibit 3 consists of cited excerpts of the Expert Report of Richard G. Frank and Thomas G. McGuire, dated August 23, 2013, served by plaintiffs in this action.

5. Exhibit 4 consists of cited excerpts of the Expert Report of Thomas G. McGuire in Response to Defendants’ Reports, dated October 25, 2013, served by plaintiffs in this action.

6. Exhibit 5 consists of cited excerpts of the transcript of the Deposition of Thomas G. McGuire, taken on November 25, 2013.

7. Exhibit 6 is a financial document produced by Teva in this action, bates-numbered Teva-ESO-146876-78, concerning Teva's omeprazole net sales. This document was marked as Exhibit 3 at the Deposition of Thomas G. McGuire taken on November 25, 2013.

8. Exhibit 7 is a letter dated April 15, 2009, bates numbered Teva-ESO-113856-66, from Attorney John Griem, on behalf of AstraZeneca, to Special Master Gale R. Patterson in *In Re Omeprazole Patent Litigation* (the "Prilosec Litigation") between AstraZeneca and Teva.

9. Exhibit 8 consists of cited excerpts of the Expert Report of Shashank Upadhye, dated August 23, 2013, served by plaintiffs in this action.

10. Exhibit 9 consists of cited excerpts of the Reply Expert Report of Shashank Upadhye, dated October 25, 2013, served by plaintiffs in this action.

11. Exhibit 10 consists of cited excerpts of the transcript of the Deposition of Shashank Upadhye, taken on November 7, 2013.

12. Exhibit 11 consists of cited excerpts of the Expert Report of John R. Thomas, dated August 23, 2013, served on behalf of Walgreen Co. and Giant Eagle, Inc. in this action.

13. Exhibit 12 consists of cited excerpts of the transcript of the Deposition of John R. Thomas, taken on October 30, 2013 in this action.

14. Exhibit 13 is the Expert Report of Philip Green, dated September 30, 2013, as served by defendants in this action.

15. Exhibit 14 is the Supplemental Expert Report of Philip Green, dated December 4, 2013, as served by defendants in this action.

16. Exhibit 15 is the Consent Order and Final Judgment entered on the docket on September 30, 2013 by Judge Denise Cote (ECF No. 259) in *Astra Aktiebolag v. Andrx Pharms.*, 1:99-cv-09887 (S.D.N.Y.).

17. Exhibit 16 is an Opinion and Order issued by Judge Barbara Jones, dated June 8, 2010 and entered on the docket on June 9, 2010 (ECF No. 145), in *AstraZeneca AB v. Apotex Corp.*, No. 01-cv-09351 (S.D.N.Y.).

18. Exhibit 17 is an Opinion and Order issued by Judge Denise Cote, dated November 26, 2013 and entered on the docket on December 3, 2013 (ECF No. 240), in *AstraZeneca AB v. Apotex Corp.*, No. 01-cv-09351 (S.D.N.Y.).

19. Exhibit 18 is the Direct Purchaser Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories to Direct Purchase Plaintiffs, dated July 15, 2013, as served by plaintiffs in this action.

20. Exhibit 19 is the End-Payor Plaintiffs' Supplemental Responses to Defendants' First Set of Interrogatories, dated August 21, 2013, as served by plaintiffs in this action.

21. Exhibit 20 consists of cited excerpts of the Expert Report of Keith Leffler, dated August 23, 2013, served on behalf of Walgreen Co. and Giant Eagle, Inc., in this action.

22. Exhibit 21 consists of cited excerpts of the transcript of the Deposition of Keith Leffler, taken on November 8, 2013.

23. Exhibit 22 consists of cited excerpts of the Expert Report of Marilyn A. Apfel, Ph.D., dated October 25, 2013, served on behalf of Walgreen Co., Giant Eagle, Inc., and Rite Aid, in this action.

24. Exhibit 23 consists of cited excerpts of the transcript of the Deposition of Marilyn Apfel, taken on November 20, 2013.

25. Exhibit 24 consists of cited excerpts of the Expert Report of Cheryl D. Blume, Ph.D., dated August 23, 2013, served on behalf of direct and end-payor class plaintiffs.

26. Exhibit 25 consists of cited excerpts of the Deposition of Cheryl Blume, taken on December 3, 2013.

27. Exhibit 26 consists of cited excerpts of the Expert Report of Laraine L. Meyers, R.Ph., Ph.D., dated October 25, 2013, served on behalf of Walgreen Co., Giant Eagle, Inc., and Rite Aid, in this action.

28. Exhibit 27 consists of cited excerpts of the Deposition of Laraine Meyers, taken on November 18, 2013.

29. Exhibit 28 consists of cited excerpts of the Expert Report of Douglas L. Sporn, dated September 30, 2013, as served by defendants Ranbaxy Laboratories, Ltd., Ranbaxy Pharmaceuticals, Inc., and Ranbaxy, Inc.

30. Exhibit 29 is “FDA, Drugs@FDA Glossary of Terms,” *available at* <http://www.fda.gov/Drugs/informationondrugs/ucm079436.htm#T> (last visited Dec. 9, 2013), defining “Tentative Approval.”

31. Exhibit 30 is a document produced by Teva in this action, bates numbered Teva-ESO-003598, April 12, 2006 Facsimile Letter from Florence Fang, Director of Chemistry II, Office of Generic Drugs, FDA, to Ivax Pharmaceuticals, Inc., “Chemistry Comments to be Provided to the Applicant.”

32. Exhibit 31 is a document produced by Teva in this action, bates numbered Teva-ESO-019405, August 5, 2008 Facsimile Letter from Florence Fang, Director of Chemistry II, Office of Generic Drugs, FDA, to Ivax Pharmaceuticals, Inc., “Chemistry Comments to be

Provided to the Applicant.” This document was marked as Exhibit 5 at the Deposition of Cheryl Blume taken on December 3, 2013.

33. Exhibit 32 is a document produced by Teva in this action, bates numbered Teva-ESO-019420, August 19, 2011 Letter from Robert S. Vincent, Director, Regulatory Affairs, to Keith Webber, Ph.D., Acting Director, Office of Generic Drugs, “Minor Amendment - Chemistry.” This document was marked as Exhibit 6 at the Deposition of Cheryl Blume taken on December 3, 2013.

34. Exhibit 33 is a document produced by Teva in this action, bates numbered Teva-ESO-075999, March 22, 2007 Email Chain from Ayne Klein to Pat Jaworski titled “Esomeprazole DR.”

35. Exhibit 34 is a document produced by Teva in this action, bates-numbered Teva-ESO-039079, January 24, 2012 Email Chain from Carrie Groff to Ayne Klein and others titled “Deal Esomeprazole DR Capsules temp.xls.”

36. Exhibit 35 is a document produced by Teva in this action, bates numbered Teva-ESO-039727, July 11, 2012 Email Chain from Tina Guilder to Maureen Cavanaugh titled “Question – esomeprazole.”

37. Exhibit 36 is a document produced by Teva in this action, bates numbered Teva-ESO-136540, Amendment No. 5 to Supply Agreement (Group I/II) between Ivax Pharmaceuticals and Cipla, Ltd. dated March 29, 2013.

38. Exhibit 37 is a document produced by Teva in this action, bates numbered Teva-ESO-019429, March 8, 2012 Facsimile Letter from Glen J. Smith, Director, Division of Chemistry II, Office of Generic Drugs, FDA, to Ivax Pharmaceuticals, Inc., “Quality Deficiency

- Minor.” This document was marked as Exhibit 7 at the Deposition of Cheryl Blume taken on December 3, 2013.

39. Exhibit 38 is a document produced by Teva in this action, bates numbered Teva-ESO-019445, September 27, 2012 Facsimile Letter from Barbara M. Davit, Ph.D., J.D., Director, Division of Bioequivalence II, Office of Generic Drugs, FDA, to Teva Pharmaceuticals USA, “Bioequivalence Deficiencies.” This document was marked as Exhibit 15 at the Deposition of Laraine Meyers taken on November 18, 2013.

40. Exhibit 39 is a document produced by Teva in this action, bates numbered Teva-ESO-046804, June 26, 2012 Email Chain from John Kovaleski to Marc Goshko titled “Products.”

41. Exhibit 40 is a document produced by Teva in this action, bates numbered Teva-ESO-046805, April 18, 2012 Email Chain from John Kovaleski to Debbie Jaskot and others.

42. Exhibit 41 is the declaratory judgment complaint filed in *Ivax Pharmaceuticals, Inc. v. AstraZeneca AB and Merck & Co., Inc.*, Civ. Action No. 08-02165, (D.N.J.) [Dkt. 1], filed April 30, 2008.

43. Exhibit 42 is the docket sheet for *Ivax Pharmaceuticals, Inc. v. AstraZeneca AB and Merck & Co., Inc.*, Civ. Action No. 08-02165.

44. In accordance with the procedure set forth in the Court’s Order (ECF No. 583) allowing the parties’ Joint Motion (ECF. No. 579), this declaration is being publicly filed on ECF without the exhibits to permit all parties time to review the attachments to determine if they contain any confidential information for which that party wishes to file a motion to seal. Any exhibits to this Declaration that are not the subject of a pending or allowed motion to seal will be publicly filed on December 16, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Laurence A. Schoen

Laurence A. Schoen

Dated: December 10, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December 2013, I filed and served the foregoing via the Court's CM/ECF system, which will serve notification of such filing by email to all counsel of record.

/s/ Laurence A. Schoen

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